

Defendant Amrish Mahajan (“Mr. Mahajan”), by and through his attorneys and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully moves to dismiss the Complaint filed by Plaintiff Federal Deposit Insurance Corporation (“FDIC”) for failure to state any claim against Mr. Mahajan on which relief may be granted. In support of his motion, Mr. Mahajan states as follows:

1. On October 25, 2011, the FDIC filed a Complaint against Mr. Mahajan and other defendants for various allegedly wrongful actions they engaged in that purportedly led to losses and the closing of Mutual Bank.

2. For these actions, the FDIC alleges that Mr. Mahajan was negligent, grossly negligent, breached his fiduciary duty and his duty of loyalty to Mutual Bank.

3. The FDIC, however, fails to allege sufficient facts supporting any of its legal claims against Mr. Mahajan. Further, the claims are not plead sufficiently to overcome the business judgment rule.

4. Lastly, the FDIC's negligence and breach of fiduciary duty claims are duplicative.

5. As such, the FDIC's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), because it fails to state a claim upon which relief can be granted.

6. In further support of his Rule 12(b)(6) basis for dismissal, Mr. Mahajan has filed concurrently with this Motion his Memorandum of Law in Support thereof.

WHEREFORE, Defendant Amrish Mahajan respectfully requests that this Court dismiss the FDIC's Complaint in its entirety and with prejudice, and grant Mr. Mahajan such further and additional relief as this Court deems just and proper.

Dated: January 18, 2012

Respectfully submitted,

/s/ Steven M. Malina
One of the Attorneys for
Defendant Amrish Mahajan

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